IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO: 19261 of 1999

Between:

S.R.Basheer S/o.Shamshuddin (Late)
Department of Physics, Instrumentation work shiop
S.V.College of Arts & Science, Tirupathi, Chittoor District

..... PETITIONER

AND

1 The Registrar S.V.University, Tirupathi, Chittoor District
2 Head of the Department of Physics S.V.College of Arts & Science
Tirupathi, Chittoor District
3 Head, USIC, S.V.University
College of Arts and Sciences Tirupathi, University Service and

Instrumentation Centre

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of mandamus order or direction to the respondents to consider the petitioner for promotion to the post of Technician, USIC, SVU TPT retrospectively w.e.f. 16/12/98 with all consequential benefits, by declaring the action of the respondents in not promoting the petitioner to the post of Technician, USIC though remaining vacant from 16/12/98 and the petitioner claimed and reminded on several occasions as arbitrary, illegal being violation of Art.14, 16 and 21 of Constitution of India.

Counsel for the Petitioner: MR.D.SESHADRI NAIDU appearing on behalf of MR.KRISHNA DEVAN

Counsel for the Respondents: MR.B.ADINARAYANA RAO

The Court made the following:

ORDER:

This writ petition is filed seeking a writ of Mandamus declaring the action of the respondents in not promoting the petitioner to the post of Technician, USIC, SV University, Tirupati, retrospectively with effect from 16-12-1998, as arbitrary and illegal, with a consequential direction to the respondents to promote the petitioner as Technician with effect from 16-12-1998.

2. It is the case of the petitioner that he was appointed as a Helper into USIC with effect from 13-06-1983. Subsequently, he was promoted as a Workshop Assistant with effect from 13-08-1992. Further promoted as Junior Mechanic with effect from 24-10-1996, and Foreman in the Department of Physics with effect from 26-09-1998 of S.V.College of Arts and Science, Tirupati. While so, two posts of Technicians were filled up by promoting eligible candidates on 19-08-1997. However, one vacancy of Technician of USIC arose consequent on promotion of Sri A.Dhananjaya Chetty with effect from 16-12-1998. The University has notified the Cadre Rules for Technical Staff working in USIC and Department of Physics. As per the said Rules, the petitioner is qualified and eligible for being promoted to the post of Technician in the vacancy that caused due to promotion of Mr.A.Dhananjaya Chetty, Technician. The said vacancy arose on 16-12-1998. The petitioner claimed promotion in the said vacancy by way of representations dated 09-01-1999 and 10-03-1999. However, the Registrar called for a clarification from the Head of USIC about the specialization of candidates for promotion to Technician post by his letter dated 06-04-1999, instead of asking for clarification from the Head of the Department. Further, the petitioner also complained, that juniors to him are sought to be

promoted contrary to the Cadre Rules, by his representation dated 11-06-1999. In spite of this, the case of the petitioner was not considered for being promoted to the post of Technician in USIC with effect from 16-12-1998 on which date the said Dhananjaya Chetty, Technician, was promoted to higher grade. It was also asserted by the petitioner that one Mr.G.Umapathi, V.Jhon Devanand, and G.V.Subba Reddy, were promoted as Mechanic, Electric Mechanic, Junior Mechanic vide order dated 19-08-1997 by relaxing the qualification for promotion. The post of Technician brought under Central Workshop in USIC, which ever since it came into being and remained until 1997 under the control of Head/Professor, Department of Physics. In the year 1997, the USIC, who was being manned by the Head of the Department only, but Cadre Rules framed and approved by the Executive Council of the University has not been made any distinction. Therefore, it must be deemed that the Cadre Rules meant for both USIC and Department of Physics are common. Therefore, promoting one D.Munikrishna Reddy, who was working as Junior Mechanic since August 1997, is also illegal, since he was junior to the petitioner. The respondents are filling up the post by inducting the juniors to the petitioners, instead of promoting the petitioner, who was fully qualified and eligible for promotion. Therefore, the action of the respondents is arbitrary and illegal.

3. A detailed counter-affidavit has been filed on behalf of the respondents denying the allegations made by the petitioner. It is asserted by the respondents that a committee is appointed to consider the eligibility of candidates seeking promotion to the post of Technician. It is true that the petitioner is working in the Department of Physics as Helper and promoted as Workshop Assistant and further promoted as Foreman with effect from 26-09-1999 in the Department of Physics itself. Likewise, the persons working in USIC are also being promoted for the posts existing in USIC only according to their qualifications etc., and not for the vacant posts existing elsewhere, as these are separate units. The USIC and Department of Physics are two distinct institutions having their own separate operational jurisdiction and staff pattern. While so, three posts of Technicians fell vacant only in USIC and there was no post of Technician existing in the Department of Physics. Therefore, the

contention of the petitioner that three posts of technicians in USIC and Department of Physics are one and the same is untenable. As usual, at the inception of the new Departments in the initial stages, the posts are sanctioned and funded by the UGC under various plan periods. After cessation of financial assistance of UGC, the State Government has been undertaking the financial liability. Therefore, the contention of the petitioner that the persons holding the posts of UGC are not eligible for promotion to the posts, whose liability is borne by the State Government, is not correct. The Cadre Rules for the posts existing in USIC and the Department of Physics are approved by the Executive Council, and that does not mean that the Department of Physics and USIC are one unit and employees working in a unit are eligible for promotion to the posts existing in the other unit, as the nature of work and specialization of skills needed for these Departments are altogether different. The USIC is a distinct unit and headed by a separate head catering to the needs of all the institutions in the University. It has got its own staff pattern, budget and it is a non-vacation unit, whereas the Department of Physics is a separate unit headed by the separate Head under the School of Mathematical and Physical Sciences. It is a vacation Department having its own staff pattern. However, the University constituted a committee with Rector, Registrar, one of the Professors from the Department of Physics, Head USIC and one Service Expert to consider the issue of effecting promotion for the vacant posts of 'Technician' in USIC and the Committee had resolved to call for the information.

4. I have given earnest consideration to the submissions made on either side and perused the material made available on record.

5. In the counter filed by the respondent, it is categorically asserted that USIC and the Department of Physics are altogether different and they have their own operational jurisdiction. They have their own cadre rules and staff pattern. Therefore, the contention of the petitioner that his juniors were promoted to the post of Technician is all imaginary. Admittedly, all those three persons whose names were mentioned in the affidavit, asserting that they are juniors, are with USIC, whereas the petitioner is in the Department of Physics and even for the purpose of considering Technicians in the Department of Physics, a committee

has been constituted to look into the feasibility of creating Technician posts in the Physics Department also. Therefore, the contention of the petitioner that since one A.Dhananjaya Chetty was promoted to higher post from the cadre of Technician on 16-12-1998, the petitioner is fully qualified and eligible for being promoted to the said vacancy caused on 16-12-1998, is all imaginary and speculative. Once, the Department is different, and the operational area and the staff pattern of USIC and the Department of Physics are different, the question of the petitioner claiming seniority over the persons referred to in the affidavit is also imaginary and speculative. The writ petition is devoid of merits and is liable to be dismissed.

6. Accordingly, The writ petition is dismissed. However, the respondents are directed to consider the case of the petitioner as and when the vacancy arises according to the seniority and the merit of the petitioner as per law. No order as to costs.

C.V.RAMULU, J

28th June, 2005

SKM

Copy to:

1 The Registrar S.V.University, Tirupathi, Chittoor District
2 Head of the Department of Physics, S.V.College of Arts & Science Tirupathi, Chittoor District
3 The Head, USIC, S.V.University College of Arts and Sciences Tirupathi, University Service and Instrumentation Centre.

4 Two C.D. Copies.

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